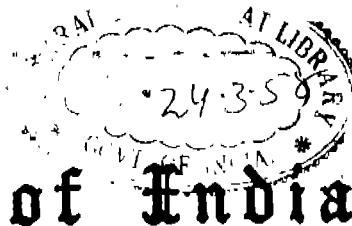


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No. 31] NEW DELHI, THURSDAY, MARCH 20, 1958/PHALGUNA 29, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, 12th March 1958/Phalguna 21, 1879 Saka

S.O. 310.—Whereas the election of Shri Bhiku Lal as a member of the House of the People from the Chhindwara constituency has been called in question by an election petition duly presented under part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Lekhrām, son of Dadoolal, of Mouza Dongar Parasia, P.C. No. 70, R.I.C. Parasia, Tahsil and District Chhindwara.

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provision of section 86 of the said Act, for the trial of the said election petition, has in exercise of the powers conferred on it by section 109 of the said Act, granted leave to the petitioner to withdraw the said petition.

And whereas the said Tribunal in pursuance of the provisions of clause (c) of sub-section (3) of section 110 of the said Act, allowed Shri Ramakant Keshorao Haldulkar, Cultivator, Chitnawisganj, Chhindwara to be substituted as petitioner in place of the original petitioner.

And whereas the said Tribunal, has in pursuance of the provisions of section 103 of the said Act, sent a copy of its order in the said election petition to the Commission.

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE SHRI C. B. KEKRE, MEMBER, ELECTION TRIBUNAL, CHHINDWARA

ELECTION PETITION No. 5 OF 1957

R. K. Haldulkar.—*Petitioner.*

*Versus*

Bhikulal Chandak and 11 others.—*Respondents.*

ORDER

(Passed this 15th day of February 1958)

1. By this election petition, the election of respondent No. 1 Shri Bhikulal Chandak to the House of People from the Chhindwara Parliamentary Constituency, is sought to be declared void.

2. The petition was originally filed by one Lekhrām (R.W. 4). After a few hearings of the petition, he applied for leave to withdraw u/s 109 of the Representation of People Act, which was granted. Thereafter Shri Haldulkar, who was original respondent No. 6, applied, u/s 110(3) (c) of the Act to be substituted in place of Lekhrām and he was so substituted.

3. The Chhindwara Parliamentary Constituency is a double member constituency—one of the seats being reserved for Scheduled Tribe Representative. The present petitioner Shri Haldulkar, respondents 1 to 5, 7, 8 and 12 filed their nomination papers for the general seat from this Constituency. The scrutiny of the nomination papers for this Constituency,

as also of the nomination papers for the Legislative Assembly Constituencies in the Chhindwara district was fixed to be held on 1st February 1957. The then Collector, Chhindwara, Shri B. R. Mandal (R.W. 8) was the Returning Officer for all these constituencies. Respondent No. 12, Shri S. S. Sharma had filed his nomination paper for the general seat from the Parasia Legislative Assembly Constituency also which is in the Chhindwara district.

4. On 1st February 1957, the Returning Officer took up the scrutiny of the nomination papers for the Parliamentary Constituency first. No objections were raised to any of the nomination papers for this constituency. The Returning Officer then proceeded to scrutinise the nomination papers of the Legislative Assembly Constituencies. When the nomination papers for the Parasia Legislative Assembly Constituency, came up for scrutiny, an objection was raised to the nomination paper of respondent No. 12 Shri Sharma filed in respect of Parasia Legislative Assembly Constituency. It was to the effect that the State Government owned more than 25% shares in the Rewa Coalfields Ltd. in which Company Shri Sharma held an office of profit and hence he, as holding an office of profit under the Government, was not eligible for membership of the Madhya Pradesh Legislative Assembly. It may here be mentioned that the Rewa Coalfields, The Pench Valley Coal Co. Ltd. and the Amalgamated Coalfields Ltd. are three Companies coal mining concerns. They have a common Managing Agent, Shaw Wallace & Co.

5. The Returning Officer held an enquiry and on the same day, upholding the objection, rejected the nomination paper of Shri Sharma from the Parasia Legislative Assembly Constituency. The relevant part of the order is reproduced below:

"Had Shri Sharma confined his activities only to the Pench Valley Coal Co., it would have been a debatable point whether his post is an office of profit, but under order of the Shaw Wallace Co. Ltd., which holds financial interest in the Rewa Coalfields Ltd., he has audited the accounts of the last named Company as well and he has also represented the employers of this Company before the Industrial Tribunal as stated in the affidavit of Shri Kashiprasad Verma. In view of this, the office of Shri Sharma is one to which some power or patronage is attached as far as the Rewa Coalfields Ltd., are concerned. Being their auditor, he exercises executive functions and holds an office of dignity or honour in respect of that Company which is confirmed by the very fact that he has represented the employers of the Rewa Coalfields Ltd. before the Industrial Tribunal. In view of this, I have no other alternative but to declare Shri Sharma as a person who is holding office of profit under the Government, and as such, his nomination paper is declared invalid.

(Sd.) B. R. MANDAL,

Returning Officer,

Chhindwara, M.P.L.A., Parasia.

Dated 1st February 1957.

Deputy Commissioner, Chhindwara."

6. It appears after this order referred to above was passed, the Returning Officer declared the nomination paper of respondent No. 12, Shri Sharma, for the Parliamentary Constituency invalid. He was not allotted any symbol and no ballot boxes were provided for him at the poll.

7. After the poll, the result of the election was declared on 24th March 1957 and respondent No. 1 and respondent No. 11, who had polled the largest number of votes, were declared elected to the general and reserved seats respectively from the Chhindwara Parliamentary Constituency. They had contested the election as Congress Party candidates.

8. The election of respondent No. 1 is challenged on the ground of improper rejection of nomination paper of respondent No. 12 Shri Sharma, on the ground of commission of corrupt practices by respondent No. 1 or by his election agent or by persons who acted with the consent of respondent No. 1 or election agents and on the ground of improper acceptance of nomination paper of respondent No. 3 Gourishanker who, it was stated, was below 25 years of age on the date of filing the nomination paper. Particulars of corrupt practices alleged were stated in a list of corrupt practices annexed to the petition which list also covered items of acceptance of invalid votes, personation and canvassing done by workers of the Congress Party candidates within 100 yards of certain Polling Stations. The corrupt practices alleged were:

- (1) Undue influence.
- (2) Procuring assistance of government servants in furtherance of the prospects of the election.
- (3) False propaganda.
- (4) Bribery.
- (5) Incurring or authorising expenditure in excess of the maximum limit prescribed; and
- (6) Procuring conveyances to carry voters to Polling Stations.

9. It was stated that when the scrutiny of nomination paper of Chhindwara Parliamentary Constituency was completed, respondent No. 12, Shri Sharma, was declared by the Returning Officer, to be duly nominated candidate, but later in the day, after deciding the objection to the nomination paper of respondent No. 12 from the Parasla Legislative Assembly Constituency and allowing it, changed his decision of declaring nomination paper of respondent No. 12 for the Parliamentary Constituency as "Valid" to declaring it "Invalid" which, it was pleaded, the Returning Officer had no jurisdiction to do, and as such, the rejection of the nomination paper by the Returning Officer was improper.

10. The petitioner alleged that respondent No. 12 was working as auditor of the Pench Valley Coal Co. and Amalgamated Coalfields Ltd. which were under the management of Shaw Wallace & Co. and that he held no office in the Rewa Coalfields Ltd., that neither the Central Government nor the State Government of Madhya Pradesh held any share in the capital of the Rewa Coalfields Ltd. and on this ground also the rejection of nomination paper of respondent No. 12 was improper.

11. The respondent No. 1 denied the allegations about commission of corrupt practices and the instances of such practices detailed in the list of corrupt practices, as also the allegations about invalid votes being accepted, personation and canvassing within 100 yards of polling booths. It was further denied that respondent No. 3 was below 25 years of age on the date of nomination or that his nomination paper was improperly accepted. The allegations about improper rejection of the nomination paper of respondent No. 12 and the ground stated in the petition in support of that allegation were also denied.

12. It was stated by respondent No. 1 that respondent No. 12 had been taking part in the administration of Shaw Wallace & Co. Ltd., The Pench Valley Coal Co. Ltd., the Amalgamated Coalfields Ltd. and Rewa Coalfields Ltd. and was acting for and on behalf of the Chief Mining Engineer of the Shaw Wallace & Co. who was the Chief Administrative Officer of these Coal Companies, that respondent No. 12 was working as a Labour Officer and Auditor of Shaw Wallace & Co., Managing Agents of the Rewa Coalfields Ltd., that he signed transfer orders and departmental papers in relation to all the Companies mentioned above and had audited the accounts of the Rewa Coalfields Ltd., had represented that Company before the Industrial Tribunal and as such, held an office of profit under the Rewa Coalfields Ltd.

13. Respondent No. 1 further alleged that the late H.H. Sir Gulabsingh, the then Ruler of Rewa, owned 95,000 shares in the Rewa Coalfields Ltd. which after that State merged into the Union of India, vested in the Union Government, that the Central Government at present owned 45,200 shares in the Rewa Coalfields Ltd. which constituted more than 25% share in the capital of that Company and as such, respondent No. 12, holding an office of profit under that Company, was disqualified u/s 7(e) of the Representation of People Act.

14. It was also the case of respondent No. 1 that the Pench Valley Coal Co. Ltd. and Rewa Coalfields Ltd. were making continuous supply of coal to the railways owned by the Central Government and respondent No. 12, as an employee of these Companies, was interested in such contracts for supply of coal to the railways, and as such, was disqualified u/s 7(d) of the Representation of People Act.

15. Another ground taken by respondent No. 1 in support of valid rejection of nomination paper of respondent No. 12 was that the Rewa Coalfields Ltd. was a Government Company as defined in section 617 Indian Companies Act since the Government of Madhya Pradesh held more than 51% of the shares of that Company and as Shri Sharma held office of profit under that Company, he was a person holding office of profit under the Government and, thus, disqualified under Act 102(1)(a) of the Constitution of India from being a member of the House of People. Respondent No. 11 also pleaded the disqualification of respondent No. 12 u/s 7(e) of the Representation of People Act on the grounds already stated above.

16. The following agreed issues were framed and my findings on them are given against each:-

| <i>Issues</i>  | <i>Findings</i>   |
|--|---|
| 1. Whether respondent No. 12 works as an Auditor and Labour Officer of Shaw Wallace & Co. Ltd., ?  | Yes.  |
| 2. Whether he is in charge of administration of Shaw Wallace & Co. Ltd ?   | Yes, partly.  |
| 3. Whether he holds Office of profits in Rewa Coalfields Co. Ltd ?   | Yes.  |
| 4. Whether the Central Govt. has any share in the Rewa Coalfields Co. Ltd ? If so, what is the extent and percentage of shares so held ? | 45,200 share of Rs 10/-each.<br>More than 25 percent shares in the Capital. |

## Issues

## Findings

5. Whether the State of M. P. holds more than 51 percent shares in Rewa Coalfields Ltd. ?
6. If so, and if respondent No. 12 holds office of profits under the Rewa Coalfields Ltd., is he disqualified under Art. 102(1) of the Constitution of India for being chosen as a Member of Parliament ? No.
7. Whether the Pench Valley Coal Co. Ltd., holds contract for supply of coal to the railway administration ? No.
8. Whether the Rewa Coalfields Ltd. holds contract with the Central Government for supply of coal ? No.
9. Whether the Central Government is financially interested in Rewa Coalfields Ltd., Pench Valley Coal Co. Ltd., The Amalgamated Coalfields Ltd. and the Shaw Wallace Co. Ltd. ? Finding not necessary.
10. If so, whether respondent No. 12 was disqualified on the date of nomination and scrutiny under section 7(d) and (e) Representation of People Act ? Not disqualified u/s. 7 (d). Disqualified u/s. 7(e).
11. Was the nomination paper of respondent No. 1 improperly rejected by the Returning Officer, of Chhindwara Parliamentary Constituency ? No.  
If so, are the elections of respondents 1 and 11 as members of the House of People from the Chhindwara Parliamentary Constituency rendered void ? No.
12. (a) Was the respondent No. 3 below 25 years of age on the date of nomination and scrutiny ? No.  
(b) Was his nomination paper improperly accepted ? No.  
(c) Has the result of election been materially affected on that account ? Does not arise.
13. (a) Was there interference with free exercise of electoral right because of instances of undue influence and intimidation enumerated in paragraph I (i to xxi.) and paragraph II(i), last part of the list of the corrupt & illegal practices filed along with the petition ? No.  
(b) Whether they were committed by respondent No. 1 or his election agent or with the consent of respondent No. 1 or his election agent ? Does not arise.
14. (a) Whether Shrimati Sita Parmanand obtained assistance of police force to accompany her between the dates 15-2-1957 to 1-3-1957 ? No.  
(b) Whether the police constables accompanied her on her election campaign ? No.  
(c) Was this done in furtherance of the prospects of respondent No. 1's election ? Does not arise.  
(d) Was this done with the consent of respondent No. 1 or his election agent ? Does not arise.
15. (a) Was Government machinery at district level, including the D. C., The D.S.P. and police force utilised at the time of visit of Shri Dr. Katju to Chhindwara district to bring pressure on the public to vote for Congress ? No.  
(b) Was this done with the consent of respondent No. 1 or his election agent ? Does not arise.
16. (a) Was Government machinery utilised to make the tour of Shrimati Laxmi Menon to Chandamata and Junnardeo successful and was this tour for furtherance of the prospects of election of respondent No. 1 ? First part: No. Second part: does not arise.  
(b) Was this done with the consent of respondent No. 1 or his election agent ? Does not arise.
17. (a) Whether the propaganda, as stated in paragraph III(i) and (ii) of the list of corrupt and illegal practices attached with the petition made ? No.  
(b) Was this done with the consent of respondent No. 1 or his election agent ? Does not arise.

## Issues

## Findings

- (c) Whether the statement of facts contained in the propaganda mentioned above was false or the person making the statement believed the statements of facts to be false or did not believe them to be true ? Does not arise.
18. (a) Was corrupt practices of bribery, as detailed in paragraphs IV(i to v) and VII (i) of list of corrupt and illegal practices attached to the petition committed ? No.
- (b) If so, was this with the consent of respondent No. 1 or his election agent ? Does not arise.
19. (a) Whether at Polling Booths Nos. 19, 20 and 21 certain voters were not allowed to vote though they were to vote at these Polling Booths according to the Voters' List ? No.
- (b) Has this materially affected the result of the election ? Does not arise.
20. (a) Whether at Booth No. 56 at Jamai, S. Nos. 184 (Saraswati) and No. 351 (Mujla) were allowed to vote though their names had been deleted from the Voters' List ? No.
- (b) Has this materially affected the result of the election ? Does not arise.
21. Whether the respondent No. 1 incurred or authorised expenditure in excess of what prescribed ? No.
22. (a) Whether at Polling Booth No. 1 at Chandameta, one Mansingh son of Balbir singh Rajput voted in the name of Hamirsingh ? No.
- (b) If so, whether the result of the election has been materially affected thereby ? Does not arise.
23. (a) Whether a truck, No. N.P.A. 700 was provided for carrying voters from village Sukri to Palachourai Polling Booth No. 61 ? No.
- (b) Whether this was done by respondent No. 1 or his election agent or with the consent of respondent No. 1 or his election agent ? Does not arise.
24. (a) Whether propaganda, as mentioned in paragraph X (i to iv) of list of corrupt and illegal practices annexed to the petition was carried on for Congress candidate within 100 yards of Polling Booths ? No.
- (b) If so, whether this has materially affected the result of the election ? Does not arise.

## Reasons for the findings

17. No evidence was adduced by either party on matters covered by issues 12 to 20 and 22 to 24. I find issues 12(a) and (b), 13(a), 14(a) and (b), 15(a), 16(a), 17(a), 18(a), 19(a), 20(a), 22(a), 23(a) and 24(a) in the negative. Issues 12(c), 13(b), 14(c) and (d), 15(b), 16(b), 17(b) and (c), 18(b), 19(b), 20(b), 22(b), 23(b) and 24(b), therefore, do not arise.

18. Issue No. 21.—There is absolutely no evidence that respondent No. 1 incurred or authorised expenditure in connection with election in excess of the maximum prescribed. The learned counsel for the petitioner urged that it was evident from the evidence of Ramnivas (P.W. 2) who was in charge on behalf of the District Congress Committee, Chhindwara of the election propaganda for the Congress Party candidate for the Parliamentary seat and of Kashiprasad Verma (R.W. 3) that Dr. Katju, Chief Minister, Madhya Pradesh, and Shrimati Menon had toured part of this Constituency in Chhindwara district and that according to Ramnivas (R.W. 2), about Rs. 6,000 had been incurred by the District Congress Committee, Chhindwara as expenses for election campaign. It was submitted that it was respondent No. 1's own admission that he did not show expenses on these accounts in his return of election expenses and hence he had committed the corrupt practice u/s 123 (6) of the Representation of People Act. In the first place, there is no plea that certain expenditure, that had been incurred, had not been entered in an account to be maintained by a candidate u/s 77(1) of the Act. The corrupt practice pleaded was incurring or authorising expenditure in excess of the limit prescribed u/s 77(3) of the Act. Without any plea, the petitioner cannot be allowed now, at the stage of arguments, to contend that there was contravention of section 77(1) of the Act.

19. Even if it were permissible for the petitioner to raise that contention now, I do not think that there is substance in this contention. The submission that the expenses incurred by the District Congress Committee and those incurred in connection with tours of Dr. Katju and Shrimati Menon, should have been included in the return of election expenses, is based on the observations of Election Tribunal, Nagpur, in *Amirchand Vs. Surendralal Jha*, 10 E.L.R. 57. The provisions of the Representation of People Act and the rules thereunder, which form the basis of that decision, have undergone change by an amendment in 1956. Now, u/s 77 of the Representation of People Act, the account is to be kept only of all expenditure in connection with election incurred or authorised by the candidate or his election agent. The word "authorised" would not cover expenditure incurred by a party sponsoring the candidature if the expenditure is incurred without consultation of the candidate. Merely knowledge on the part of the candidate that certain expenditure is being incurred by the party and his keeping silent in spite of that knowledge, would not amount to authorisation. I find issue No. 21 in the negative.

20. *Issues Nos. 7 and 8.*—These two Companies—Pench Valley Coal Co. Ltd. and Rewa Coalfields Ltd., have supplied coal to the railway owned by the Central Government. Shri Dunn (R.W. 1), who is Sales Representative of the Pench Valley Coal Co. Ltd., has stated about it. He has filed statements of such supply. They are Ex. R-1 comprising two sheets covering the period January 1957 to June 1957. It is to be seen if such supply amounts to these Companies holding contracts for supply of coal to the railways.

21. Coal is a controlled commodity, both as regards its price and supply by virtue of the Colliery Control Order, 1943, which is still in force. Clause (4) of the Order authorises the Central Government to fix prices at which coal may be sold by colliery owners. Clause (5) prohibits colliery owners from selling coal or agreeing to sell it at a price different from the one fixed. Clause (7) requires colliery owners to submit certain returns to the Coal Commissioner with the Government of India. Clause (8) provides for issue of directions by the Central Government to collieries regulating disposal of stocks of coal or of the expected output of coal during any period and also empowers the Central Government to give directions as to the persons to whom coal shall or shall not be disposed of. Clause (9) enjoins on colliery owners the duty to dispose of coal in accordance with these directions given under clause (8) and not to dispose of any coal in contravention thereof. The functions of the Central Government under clause (8) are, by virtue of clause (15) exercisable by the Coal Commissioner with the Government of India, the Deputy Coal Commissioner (Distribution) and the Deputy Coal Commissioner (Production).

22. It will, thus, be seen that these two Companies had no option but to dispose of their coal in accordance with the directions of the Central Government. Shri Dunn (R.W. 1) has filed copies of 9 such directions received from the Central Government. They are all marked as Ex. R-2. It was argued for the respondent No. 1 that these documents are merely requests to the person concerned to supply coal in accordance with the details given therein and did not constitute direction contemplated by clause (8) referred to above. Those directions are worded in a polite way in the form of request. They are nonetheless directions contemplated by clause (8) of the Colliery Control Order. The programmes referred to in these documents are those approved by the Deputy Coal Commissioner (Production) in consultation with the Chief Mining Engineer, Railway Board, and are not the programmes made independently by the latter without approval of the former.

23. The statement of Shri Dunn (R.W. 1) in paragraph 2 of his deposition where he stated what procedure a consumer has to follow to obtain supply of coal, was brought to my notice in support of the submission for respondent No. 1 that the colliery supplying coal, did enter into a contract with the consumer and the latter merely obtained sanction of the Coal Commissioner for such supply. Shri Dunn has stated that the consumer intimates his requirements to the Company and if the latter consents to make supply, the consumer moves the Deputy Coal Controller for permit. There is no evidence that the railways had followed this procedure. Moreover, as far as railways are concerned, it is the Coal Commissioner who sent intimations to these two Companies to supply coal to the railways. This is evident from paragraph 3 of the deposition of Shri Dunn. Those intimations are directions under clause (8) of the Colliery Control Order. Hence these orders or directions are not by railways and their compliance would not amount to enter into contract for supply of coal. The directions are not offers which were accepted. The two Companies also did not make any offer to sell coal to the railways. They had coal for disposal, and the Central Government directed these Companies to supply coal to the railways with which directions the Companies were bound to comply on pain of incurring penalty provided by the Act under which the order is continued in force. I, therefore, do not think that the supply of coal to the railways by these two Companies or by any Company for that matter in pursuance of directions issued under clause (8) of the Colliery Control Order, would amount to holding contracts for supply of coal to the railways.

24. Freedom to offer and to an assent and mutuality of assent are essential ingredients of a contract. Where the law imposes an obligation arising out of a certain business carried on by the party on whom the obligation is imposed, there is no contract. The obligation arises because of the law to that effect.

25. The learned counsel for respondent No. 1 relied on the decision of the Supreme Court in *N. Satyanathan Vs. K. Subramaniam*, 10 E.L.R. 311 for his submission that though the law enjoined obligation, all the same the direction to supply and the supply in pursuance thereof, amounted to holding contract for supply of coal. That was a case of a holder of a stage carriage permit. One of the conditions of the permit was that if so required by the Transport Authority granting the permit, the holder shall carry mails at such rates and on such terms that might be fixed by the Transport Authority in consultation with the holder of the permit and the Postal Authorities. In pursuance of such condition, the holder of the permit entered into a formal written agreement with the Governor General to carry mails at a certain remuneration. It was held, overruling the contention, that the obligation to carry mails was one imposed by law and that it was a statutory liability and did not amount to holding a contract and that it was not a statutory liability but a contractual obligation. In that case, a separate agreement had been entered into. The following observations at page 319 of the report are relevant:

"It is true that the permit does contain a condition that the permit holder may be called upon to undertake transport of mail bags and postal articles, but that is only notice to intending applicants for stage carriage permit that the grantee of such permit may have to render that additional service for an additional remuneration if called upon to do so by the Authorities of the Postal Department. If anyone was not prepared to undertake that additional responsibility, he was free not to make an application for such a permit; but that does not mean that the agreement actually entered into between the Postal Department and the permit holder is not an independent contract governed by its own special terms."

26. Thus, it was a case of an independent contract actually entered into, though that contract was entered into because there was a condition in the permit of the stage carriage.

27. I need not comment on the submission of the learned counsel for the respondent No. 1 which he tried to support by certain observation in the decision just referred to that it was open to the company or colliery owners to say that they would not excavate coal just as in the case mentioned it was suggested that it was open to the holder of the permit to surrender his permit since I am clear that this is not a case of contract of supply of goods or for purposes of services undertaken by the Central Government. The transport of goods and passengers is no doubt a service undertaken by the Government. Coal is required for running that service. But by no stretch of imagination can it be said that by supplying coal to run the railways, the colliery owner held contract for performance of services undertaken by the Central Government.

28. The other decisions cited by the learned counsel for respondent No. 1: (i) *Shankara Pandayya Nadar Vs. V. V. Ramaswami*, 5 E.L.R. 417, (ii) *Ratansing Vs. Devendrasingh*, 7 E.L.R. 234, (iii) *A. J. Arunachalam Vs. Election Tribunal*, 9 E.L.R. 471 and (iv) *Bhikaji Keshav Vs. Brijlal*, 11 E.L.R. 301, can be distinguished, as in those cases there were definite contracts between the party and the appropriate government to perform services undertaken by that government. In the present case, there is no such contract and the supply of coal was made because without any contractual obligation, the colliery owner was bound to comply with those directions for supply given under clause 8 of the Colliery Control Order. I find issues 7 and 8 in the negative.

29. *Issue No. 9*.—I need not consider this issue as more financial interest by the appropriate Government in a Company is no ground for disqualification of a person holding office of profit under that Company. The law, as amended in 1956, requires that the Government must have not less than 25 per cent. shares in the capital of the Company.

30. *Issue No. 1*.—Respondent No. 12, Shri Sharma, was Auditor of the Pench Valley group of Companies. That Company is under the managing agency of Shaw Wallace & Co. which has what is described as Central Office of Shaw Wallace & Co. at Parasia. He was being paid from this Central Office. Shri Bright (R.W. 9) is the Chief Mining Engineer of Shaw Wallace & Co. and the administrative head of all the Companies under its managing agency. He stated that documents Exhs. R-17 to R-26 were signed by respondent No. 12 as his assistant. Ex. R-17 relates to Burhar colliery owned by Rewa Coalfields Ltd. Ex. R-20 relates to the General Office, Shaw Wallace & Co. and the rest of the documents relate to establishment of the other collieries of the Pench Valley Coal Co. Thus, the position of assistant to the Chief Mining Engineer was enjoyed by respondent No. 12 with regard to all these establishments. That could be compatible only with his being assistant to the Chief Mining Engineer, Shaw Wallace & Co. He has signed Exhs. R-13 to R-16 as Auditor, General Office, Perssia. This General Office is of the Shaw Wallace & Co. Ltd.

31. Ex. R-28 is a letter of authority given by Shri Bright to Shri Sharma to represent the Chief Mining Engineer, Shaw Wallace & Co. in a certain industrial dispute before the Industrial Tribunal. Shri Sharma has accepted that authority so given and has signed himself as Auditor, Messrs. Shaw Wallace & Co. Ltd. Exhibits R-86 and R-87 are the awards of the Industrial Tribunal in which the capacity of Shri Sharma as representative of the employers, is described as Auditor of Messrs. Shaw Wallace & Co. Such description

would not be there unless Shri Sharma had given out that capacity of his. He himself has signed the letter of authority, Ex. R-28 as Auditor of Shaw Wallace & Co. I, therefore, find that Shri Sharma worked as Auditor under Shaw Wallace & Co.

32. As regards the working as a Labour Officer with that Company, the evidence is as regards his representing the employers in the industrial disputes before the Industrial Tribunal. Such representation no doubt could be made u/s 36 of the Industrial Disputes Act, by any person authorised by the employer. Shri Bright, however, has said that Shri Sharma dealt with labour affairs under his directions. He could not state any instance in which any other person than Shri Sharma had represented the Shaw Wallace & Co. or the other three Companies under its managing agency before the Industrial Tribunal. It appears that it was the practice to depute Shri Sharma for such representation before the Industrial Tribunal. Shri Leigh R.W. 10 has stated that services of Shri Sharma were utilised as Labour Officer. I find issue No. 1 in the affirmative.

33. Issue No. 2.—Shri Bright (R. W. 9), the Chief Mining Engineer of Shaw Wallace & Co. is in charge of the administration of that Company as also of the Companies under its managing agency. Shri Sharma has signed Exhibits R-17 to R-26 as assistant of Shri Bright as stated by the witness. These orders relate to transfers of workers from one colliery by one of the Companies to another colliery owned by another Company. These orders, as pointed out above, could have been passed only by the Shaw Wallace & Co. Ex. R-3 is an order terminating the services of an employee of the Pench Valley Coal Co. This order is signed by Shri Sharma for the Chief Mining Engineer. Ex. R-4 is a show cause notice issued to the employee of Pench Valley Coal Co. to show cause why his services should not be terminated. That is also the case with Exhibits R-7 to R-11 which relate to administrative matters. Ex. R-5 relates to employee of Rewa Coalfields Ltd. and similarly Ex. R-6 also relates to employ of that Company. They are signed by the agents of the collieries owned by the Rewa Coalfields Ltd. and countersigned by Shri Sharma. Exhibits R-4 to R-11 are countersigned by Shri Sharma as stated by Kashiprasad Verma (R.W. 3). There was no occasion for Shri Sharma who is professed to be merely Auditor employed by the Pench Valley Coal Co. and Amalgamated Coalfields Ltd. to countersign such administrative orders unless he was associated with the administration of Shaw Wallace & Co. which alone could pass such orders. I find that though Shri Sharma was not in charge of the entire administration of Shaw Wallace & Co., he took part in its administration as an assistant of the Chief Mining Engineer. I find Issue No. 2 accordingly.

34. Issue No. 3.—This issue involves consideration of the following two matters; (i) whether respondent No. 12 held an office under the Rewa Coalfields Ltd. and (ii) whether that was an office of profit.

35. The expression "office of profit" is not defined either in the Representation of People Act or by the Constitution of India where that expression occurs in certain Articles of the Constitution providing for disqualification for being Member of Parliament or State Legislature.

36. An office is "a right to exercise a public or private employment and to take fees and emoluments thereto belonging" as is to be found in the definition of that expression in Tomlin's Law Dictionary given relying on Blackstone. It was, however, pointed out in the matter of Members of Vindhya Pradesh Legislative Assembly, 4 E.L.R. 422 by the Election Commission, that it would not be proper to introduce in their entirety considerations that obtained in England when defining what is "office." In order to advance the object of the provisions regarding disqualification, a beneficial construction has been given to the expression "office of profit." The Election Commission, in the case referred to, appears to have taken the view that any positions which carry emoluments of some kind or other with them, would be office. The position occupied should possess existence independent of the incumbent.

37. If Shri Sharma's services were occasionally being lent to the Rewa Coalfields Ltd. to do certain work for that Company, as was stated by Shri Leigh (R.W. 10) in his evidence, and even if he were enumerated for that work, it would not amount to holding office under the Rewa Coalfields Ltd.

38. It is now to be considered what is "profit." It, in its commonly understood meaning, connotes monetary gain. It would also cover any material gain obtained. The gain has to be tangible and perceivable by senses. Mere influence that is attached to an office or the power to patronise by virtue of that office would not be material advantage or tangible gain. I was referred by the learned counsel for respondent No. 1 to the report of the Committee appointed by the Lok Sabha on the question of office of profit. That Committee was appointed to study various matters connected with disqualification of members and to make recommendations. In the course of deliberations, the Committee considered the expression "office of profit" and was of the view that the expression would cover even an office which may not give any advantage by way of monetary gain, but is an office which carries with it honour, influence or prestige. All these attributes are intangible. The Legislature has used the term "profit" without defining it. It has to be given its ordinary meaning as commonly understood.



39. The Supreme Court, in *Ravanna Vs. Kaggeerappa*, A.I.R. 1954 Supreme Court, page 653, had to consider the expression "office of profit" occurring in section 14 (1) (A) (a) (iii) of the Mysore Town Municipalities Act and held that profit connoted pecuniary gain. It may be desirable to include in the term "office of profit" such offices as carry no monetary gain, but invest the holder of the office with influence and prestige. So long as the Legislature has not defined "profit" in that manner, it would not be permissible to attach that meaning to the word when it is not the meaning as commonly understood. I would, therefore, hold that an office of profit is one where a position is held carrying emoluments of some kind or other.

40. Shri Sharma, respondent No. 12, as pointed out above, was being paid by the Central Office of the Shaw Wallace & Co., the Managing Agents of the Rewa Coalfields Ltd., though his pay for purposes of accounting was being debited to the Pench Valley Coal Co. Ltd., and Amalgamated Coalfields Ltd. He was Auditor of the Shaw Wallace & Co. and in certain matters, held administrative charge of that Company. He was working as assistant of the Chief Mining Engineer who was the administrative head of the three Companies under the managing agency of Shaw Wallace & Co. including the Rewa Coalfields Ltd. There is no evidence that there is any person other than Shri Sharma who worked as an internal Auditor for the Rewa Coalfields Ltd. just as he did for Shaw Wallace & Co. and other Companies under its managing agency. In Exhibits R-88 and R-89, which are the awards of the Industrial Tribunal, he has been described as an Auditor of the Rewa Coalfields Ltd. That description would not be there unless Shri Sharma had described himself as such before the Industrial Tribunal. It appears that the Shaw Wallace & Co. did not employ distinct and different office personnel in the three companies and the personnel of Shaw Wallace & Co. was doing the administrative work of the Rewa Coalfields Ltd. also.

41. Shri Sharma has counter-signed certain orders of administrative nature relating to Rewa Coalfields and issued by the Chief Engineer, which have already been referred to earlier. Shri Bright (R.W.9) says that Shri Sharma had authority to sign on his behalf administrative matters pertaining to his department. That would show that passing of orders relating to administrative nature, such as transfers, dismissals of employees of the three Companies under the managing agency of Shaw Wallace & Co., was one of the compartments assigned to Shri Sharma. He represented the Rewa Coalfields Ltd. before the Industrial Tribunal. Shri Bright could not remember any other person having so represented these three Companies. For all practical purposes, he was representative of the employers including Rewa Coalfields Ltd., in the cases before the Industrial Disputes Tribunal in which Rewa Coalfields Ltd., was a party. Shri Leigh (R.W.10) has stated that services of Shri Sharma were also used as Labour Officer. I find that Shri Sharma did not hold a position in the Rewa Coalfields Ltd. by virtue of his being in charge of certain departments of Shaw Wallace & Co. and not because his services were being occasionally loaned to Rewa Coalfields Ltd.

42. The learned counsel for the petitioner argued on the authority of *Abdul Shakur Vs. Rikhabchand*, A.I.R. 1958 Supreme Court, 52, that the power to appoint and dismiss would be an important condition when ascertaining whether an officer was held under a particular person and that the source of payment of remuneration is immaterial. It was, therefore, urged by him that as the Rewa Coalfields Ltd. could not terminate the services of Shri Sharma as he was employed by the Pench Valley Coal Co. Ltd., he could not be said to be holding office under the Rewa Coalfields Ltd.

43. Shri Sharma did work for the Rewa Coalfields Ltd. in addition to the work of the Pench Valley Coal Co. The Shaw Wallace & Co. are Managing Agents of Rewa Coalfields Ltd. By Articles of Association of Rewa Coalfields Ltd., Ex. R-41, the Managing Agents are given power to appoint or remove officers or servants of Rewa Coalfields Ltd. The Managing Agents have assigned certain powers in connection with administration of the Rewa Coalfields Ltd. to Shri Sharma since he has been acting as assistant of the Chief Mining Engineer in certain matters relating to the Rewa Coalfields Ltd. also. So far as the work of Shri Sharma for Rewa Coalfields Ltd. is concerned, his employment for that work could be terminated by Shaw Wallace & Co. under the powers given to the Managing Agents. After such termination, he may continue to be in the employ of Pench Valley Coal Co., but his connection with Rewa Coalfields Ltd. would cease. Thus, applying the criterion laid down in the Supreme Court decision, it would appear that Shri Sharma was holding an office in the Rewa Coalfields Ltd. He was engaging in work of that Company not occasionally, but by virtue of his being assistant to the Chief Mining Engineer.

44. In the decision of the Supreme Court, just referred to, an earlier decision of that court in *Shivanandan Vs. The Punjab National Bank Ltd.*, A.I.R. 1955 Supreme Court, 404, was referred to and it was pointed out that the rule in that earlier case was that if the master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee out their fidelity and efficiency for cash consideration, the employees thus appointed by the servant would be, equally with the servant, servants of the master. In my view, Shri Sharma, being employed by the Managing Agents Shaw Wallace & Co., who were authorised by the Rewa Coalfields Ltd. to make appointments to that

Company and Shri Sharma being in charge of the administrative matters relating to all the Companies under the managing agency of Shaw Wallace & Co., as is seen from certain administrative orders passed by him and referred to earlier and which Shri Bright says he could sign, his acting as Auditor of the Rewa Coalfields Ltd. and being described as such as referred to earlier, would be enough to hold that he held, at the relevant time, an office under the Rewa Coalfields Ltd.

45. Shri Sharma's services to the Rewa Coalfields Ltd. were not gratis. His pay was no doubt being debited to the Pench Valley Coal Co. and Amalgamated Coalfields Ltd. That was, however, for the convenience of accounting. His pay could not have been debited proportionately to all the three Companies for whom he worked. For the work done for Rewa Coalfields Ltd., he was being paid by that Company as is deposed to by Shri Leigh (R.W.10). Shri Sharma, thus, at times, was being paid by the Rewa Coalfields Ltd. He was, thus, holding an office of profit under that Company. I find accordingly.

46. *Issue No. 4.*—For understanding of the matters covered by this issue, certain facts not in dispute, may be stated first. The Rewa Coalfields Ltd. has a total capital of 1,50,000 shares of Rs. 10/- each. Out of these, 95,400 shares stood in the name of His Highness Late Sir Gulab Singh, who was then the Ruler of Rewa. After him, his son H. H. Maharaja-dhiraj Martand Singh Bahadur became the Ruler of Rewa. He was such Ruler in 1947. In the register of Members of that Company, the shares still stand in the name of Late Sir Gulab Singh, though he is no longer alive, and the dividends on these shares are kept pending from 1949 under orders of the Central Government as per letter dated 17th May, 1949, Ex. R-42.

47. It is the case of respondent No. 1 that out of these 95,400 shares, 90,400 shares vested in the Central Government by virtue of the Vindhya Pradesh Merger Agreement. This Agreement is to be found at page 235 of the White Paper on Indian States issued by the Government of India, Ministry of States and which is Ex. R-80. Respondent No. 1 has alleged that at present, the Government of India holds 45,200 shares as it has been decided that these 90,400 shares should be divided half and half between the Government of India and the Maharaja of Rewa.

48. I had recently occasion to consider, in Election Petition No. 6 of 1957, R. N. Haldulker vs Kashiprasad Verma and others, decided on 10th February, 1958, the question of ownership of these shares. I am here reproducing what was said there in respect of the events that preceded and followed the Vindhya Pradesh Merger Agreement referred to above.

"A United States of Vindhya Pradesh was formed in March 1948, comprising of 35 States including State of Rewa. Due to certain causes, which need not be narrated here, this Union of States could not be successfully administered as one integral whole. The Government of India took up the matter with the Rulers of the States forming the Union. As a result of negotiations with them, the Rulers concerned signed in December 1949, an agreement ceding to the Dominion of India full and exclusive jurisdiction over the territory then known as the United States of Vindhya Pradesh, which included the State of Rewa. This document is the Vindhya Pradesh Merger Agreement. It is to be found at page 235 of the White Paper on Indian States, issued by the Government of India, Ministry of States.

Article II of that Agreement provides that all property of the State (United States of Vindhya Pradesh), vests in the Government of India. Under Art. VII, the Ruler of each State in the Union, was entitled to full ownership of all properties belonging to him on the date of his making over administration of the State to the Raj Pramukh in pursuance of the Covenant (forming of United States of Vindhya Pradesh). Thus, after the Merger Agreement, the territory known as the State of Rewa, came under the administration of the Government of India, and its property became the property of Government of India. This Merger Agreement was signed on 26th December 1949.

The Constitution of India was passed on 26th November 1949. Under Art. I, read with the first schedule of the Constitution, the territory known as Vindhya Pradesh, was to be a Part B State of the Union of India. Under Art. 394 of the Constitution, Art. No. 1 was to come into force on 26th January 1950. Art. 391 empowered the President to make orders amending the first and fourth schedules between 26th November 1949 and 26th January 1950. The President, by an order, Constitution (Amendment of 1st and 4th Schedules) Order, dated 25th January 1950, a day prior to Art. I was to come into force, amended the first schedule deleting from it entry of Vindhya Pradesh in list of Part B State and adding entry "Vindhya Pradesh" in the entries of Part C States. Thus, under the Constitution of India, Vindhya Pradesh never existed as a Part B State. From the time of the Vindhya Pradesh Merger Agreement, till the States Reorganisation Act, 1956, it remained a Part C State administered by the Union of India. By the States Reorganisation Act 1956, the State of Vindhya Pradesh was merged with some of the Parts of the then Madhya Pradesh State and certain other States. The composite formed the present Madhya Pradesh State."

49. If these shares that stood in the name of Late Sir Gulabsingh were property of the Rewa State, their ownership would pass to the Government of India by virtue of the Vindhya Pradesh Merger Agreement. If the shares were the private property of the Ruler of Rewa, their ownership would continue with him. The Government of India claims that these 90,400 shares are its property as is to be found from the evidence of Shri S. Narayan Swami (R.W. 12), Deputy Secretary, Ministry of Home Affairs, Government of India. There is nothing on record to show that the Ruler of Rewa, who was a party to this Vindhya Pradesh Merger Agreement, is claiming these shares as his. Even if he were claiming them as his, that would mean that there was a dispute arising out of the provisions of the Merger Agreement referred to above. The jurisdiction of courts in respect of such a dispute is barred under Art. 363 Constitution of India. The mode of settling such disputes is provided for by Art. VII of the Vindhya Pradesh Merger Agreement. Shri S. Narayan Swami (R.W. 12), has stated that there is now a decision ..... It is not known by whom ..... that 45,200 shares should go to the Government of India and 45,200 shares should go to the Maharaja of Rewa. If there was a dispute contemplated by Art. VII of the Merger Agreement, that has been decided and the decision is binding on the parties to the Agreement.

50. The learned counsel for the petitioner brought to my notice section 164 Indian Companies Act, which provides that the register of members of a Company shall be *prima facie* evidence of entries directed to be inserted therein and section 108 of that Act providing that no Company shall register transfer of shares unless certain requirements mentioned in that section were fulfilled. He urged that the ownership of the shares by the Government of India was being claimed by virtue of an agreement and not by operation of law and hence as long as the procedure in section 108 was not followed and as long as shares were not entered in the register of members of the Company in the name of the Central Government, the latter could not be said to be owning them. Section 108 merely provides for entry of registration of transfer of shares and says how that entry about transfer should be obtained. Section 164 says only about the entries in the register of members being *prima facie* evidence. If the transfer is not registered by the Company, evidently there would be no entry of the transferee in the register of members of the Company. That, however, would preclude anyone from showing that though his name was not entered in the register of members, he does own shares in the Company. I, therefore, find that the fact that the shares in question still stand in the books of the Company in the name of late H. H. Sir Gulabsingh, does not preclude the respondent No. 1 from showing that they are the property of the Government of India. If he succeeds in establishing his allegation in that respect, he is entitled to a finding that the shares are in fact held by the Government of India. I find that 45,200 shares of the Rewa Coalfields Ltd., which constitute more than 25 per cent. share in the capital of that Company, are owned by the Government of India.

51. The States Reorganisation Act, 1956, does not affect the conclusion arrived at. Section 95 (a) of that Act runs as under :

"Such of the assets of the Union within an existing State as are, immediately before the appointed day, held by the Union for purposes of the governance of the State, shall, as from that day, pass to the successor State, unless the purposes for which the assets are so held, are Union purposes."

The Vindhya Pradesh State was a Part C State as already pointed out above and it never existed as a Part B State. The assets of that State held by the Union of India would pass to the successor State which, in the present case, is the Madhya Pradesh State only if such assets were held for the governance of the Vindhya Pradesh State. The shares cannot be said to have been held for the governance of Vindhya Pradesh State. Governance denotes administration. It relates to exercising acts of sovereignty. I do not think that holding of the shares by the Union Government would be for the governance of Vindhya Pradesh, though the income from those shares might have augmented the income of the Vindhya Pradesh State which was available for its administration.

52. Issue No. 5.—In view of what has been said above, the shares that stood in the name of late H. H. Sir Gulabsingh, would not pass to the Madhya Pradesh Government. There is, thus, no material to hold that the Madhya Pradesh Government holds more than 51 per cent. shares in the Rewa Coalfields. It may here be mentioned that even according to respondent No. 1, the Government of India owned only 45,200 shares in the Rewa Coalfields and that would be holding less than 51 per cent. of the share capital of that Company. It would be only from the Government of India that the Madhya Pradesh Government could acquire ownership in those shares. If the Government of India did not own 51 per cent. of the shares, the Madhya Pradesh Government could not own that percentage of shares.

53. Issue No. 6.—As neither the Government of India nor any State Government owns 51 per cent. shares of the Rewa Coalfields Ltd., the question whether such Governments owned that extent of share, would respondent No. 12 be disqualified under Art. 102 (1) (a), does not arise.

54. Even if the Central Government owned 51 per cent. share capital of the Rewa Coalfields Ltd., respondent No. 12 would not incur disqualification under that Article of the Constitution of India simply because he holds office of profit under the Rewa Coalfields Ltd. The submission of respondent No. 1 was that when the Central Government owns 51 per cent. of the share capital of that Company, it becomes Government Company as defined in section 617 Indian Companies Act, and that holding office of profit under a Government Company would be tantamount to holding office of profit under the Government. Section 617 defines Government Company for purposes of that expression occurring in sections 618, 619 and 620 of that Act. That does not render a Government Company as defined therein equipment to Government of State or the Government of Union of India. Section 619 empowers the Central Government of exercise certain control over a Government Company for effecting audit and issuing directions regarding the manner in which accounts are to be audited. Simply because the Central Government had some control over a Government Company, as defined in section 617 Indian Companies Act in the matter of auditing of accounts, the Company does not become part of the Government. Even in cases of local or other authority, subject to the control of the Central or State Government, the membership of such local or other authority does not disqualify a person from being a Member of Parliament. It is only in respect of the offices of the President or Vice President of the Union of India that holding of such office under such local or other authority subject to the control of Central or State Government, would entail disqualification. This was pointed out in *Abdul Shakur Vs. Rikhabchand*, A.I.R. 1958 Supreme Court, 52, already referred to above.

55. *Issue No. 10.*—This issue covers two different kinds of disqualifications : (i) u/s 7(d) and (ii) u/s 7(e) of the Representation of People Act. As regards disqualification u/s 7(d) of the Act, I have already found that neither the Pench Valley Coal Co. Ltd. nor the Rewa Coalfields Ltd. had any contract for supply of goods to the Central Government or for performance of any services undertaken by that Government. Hence no question of disqualification of respondent No. 12 u/s 7(d) arises.

56. Even if the supply of coal to the Government owned railways by these Companies were held to amount to contracts contemplated by section 7(d) of the Act, I fail to see how respondent No. 12, who is merely an employee of these Companies, would be disqualified. Section 7(d) requires that to be disqualified, the person by himself should have interest in the contract or the interest should be by any person or body of persons in trust for him or for his benefit. The learned counsel for respondent No. 1 argued that respondent No. 12 was being paid bonus out of the profits of the Companies and as the contracts bring income to the Company and augment its profits, respondent No. 12 would be getting increased bonus and, therefore, was a person interested in the contracts. If this argument were accepted, then the whole lot of employees of industrial concerns holding contracts contemplated by section 7(d) would be disqualified. The interest referred to in that section must flow directly from the contract. It should not be some remote possibility of a person benefiting indirectly. The contracts if any cannot be said to be for the benefit of respondent No. 12. They would be for his benefit if the Company had been formed to provide employment to persons. I see no substance in this argument for respondent No. 1. I accordingly find that respondent No. 12 is not disqualified u/s 7(d) of the Representation of People Act.

57. Respondent No. 12, however, holds an office of profit under the Rewa Coalfields Ltd. in the capital of which appropriate Government, *viz.*, the Government of India, holds more than 25 per cent. shares, and as such, he is disqualified to be chosen as or being the Member of the House of People u/s 7(e) of the Representation of People Act.

58. *Issue No. 11.*—Before considering the question of law involved it would be proper to consider the question of fact raised by the petitioner. It was alleged by him that the Returning Officer of the Chhindwara Parliamentary Constituency had declared respondent No. 12 as a duly nominated candidate on completion of the scrutiny of the nomination papers of that Constituency and that he, later in the day, changed his decision of declaring nomination paper of respondent No. 12 for that Constituency is "valid" into declaring it as "invalid" after deciding the objection to respondent No. 12's nomination paper for the Parasla Legislative Assembly Constituency and allowing that objection.

59. The petitioner R. K. Haldulker (P.W. 1), who was a contesting candidate for the Parliamentary Constituency, K. G. Rekhle (P.W. 2), respondent No. 5, another contesting candidate from that Constituency, Ramnivas Vyas (R.W. 2), N. M. Wadiwa (R.W. 5), who is respondent No. 11 and who also was a contesting candidate and Bhikulal (R.W. 6), respondent No. 1 were present before the Returning Officer throughout the proceedings of scrutiny of nomination papers of all the Constituencies, Parliamentary as well as Legislative Assembly. The scrutiny of nomination papers for Parliamentary Constituency was taken up first and no objection to any of the nomination papers for that Constituency was taken. According to the petitioner R. K. Haldulker (P.W. 1), the Returning Officer accepted all the nomination papers for that Constituency as valid. The version of K. G. Rekhde (P.W. 2) is that the Returning Officer used to take up each nomination paper, invite

objections and when no objection was taken, he used to declare the nomination paper valid and did declare nomination paper of respondent No. 12 for the Parliamentary Constituency as valid.

60. Shri Ramnivas Vyas (R.W. 2), says that it was only at about 5 P.M. that the Returning Officer gave out that the nomination paper of respondent No. 12 for the Parliamentary Constituency and the Parasla Legislative Constituency had been rejected and that before that he did not give out anything in respect of the nomination paper of respondent No. 12 for the Parliamentary Constituency. That is also the version of N. M. Wadiwa (R.W. 5) and Bhikulal (R.W. 6).

61. Shri B. R. Mandal (R.W. 8), who was the Returning officer for the Parliamentary Constituency as well as Legislative Assembly Constituencies, says that the final result of the scrutiny of all nomination papers was declared immediately after the scrutiny of all nomination papers was over meaning thereby after the nomination papers of Parliamentary and Legislative Assembly Constituencies had been scrutinised. I must confess that I am at a loss to understand what is meant by the final result. That expression, by itself, would show that there was some result declared before the final result.

62. The point of time of declaration of the decision of the Returning Officer in the sense of its being made known to the persons present, is immaterial. He may not declare his decision of acceptance or rejection of a nomination paper, but if he has taken a decision and has endorsed it on the nomination paper, that endorsement acts as acceptance or rejection of nomination paper irrespective of whether it is made known to others or not.

63. Section 21 Representation of People Act provides for designating or nominating a Returning Officer for each Constituency. It also provides that one and the same person may be designated or nominated as Returning Officer for more than one Constituency. It will, thus, be seen that the Returning Officer for a particular Constituency has a legal existence separate from the Returning Officer of another Constituency though the person in both the cases may be the same. Returning Officer of a particular Parliamentary Constituency would not be empowered to perform functions of Returning Officer of another Parliamentary or Legislative Assembly Constituency unless he had been designated or nominated u/s 21 for the latter Constituency also.

64. The provisions regarding scrutiny and the procedure to be followed are contained in section 36 Representation of People Act. The expression "Returning Officer" used in this section, has reference to Returning Officer designated or nominated for a particular Constituency u/s 21 of the Act. Sub-section (6) of the Act provides as follows :

"The Returning Officer shall endorse, on each nomination paper, his decision accepting or rejecting the same and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection."

Under sub-section (8), the Returning Officer is required to prepare a list of validly nominated candidates, immediately after all nomination papers, which would mean nomination papers for the Constituency for which he is Returning Officer, have been scrutinised and decision accepting or rejecting the same has been recorded and to affix the list to the notice board. Bearing in mind that the Returning Officer of each Constituency has a separate legal existence, the provisions can only mean that after all nomination papers of a particular Constituency are scrutinised, the Returning Officer has to prepare a list referred to in sub-section (8). If the Returning Officer of the Parliamentary Constituency in this case had endorsed his decision on the nomination paper of respondent No. 12 for the Parliamentary Constituency, he would become *functus officio* after recording such decision, as far as scrutiny of the nomination paper and taking decision is concerned, irrespective of whether he declared his decision in the sense of making it known to candidates or persons present.

65. In the present case, as pointed out above, even if it were held that the Returning Officer declared the final result of scrutiny after the nomination papers of all Constituencies had been scrutinised, in the sense of making known the decision to persons present, there is the evidence of K. C. Rekhdhe (P.W. 2) that the Returning Officer used to make an endorsement on each nomination paper after declaration of its validity or invalidity. This declaration, according to him, used to be made separately for each nomination paper as soon as the scrutiny was completed. The evidence that the Returning Officer used to make some endorsement on each individual nomination paper after completing its scrutiny, finds support from the evidence of respondent's witness Shri N. M. Wadiwa (R.W. 5) who says that the Returning Officer used to write on each nomination paper "No objection" if no objections were made when invited.

66. The intrinsic evidence of this particular nomination paper of respondent No. 12 for the Parliamentary Constituency also shows that the Returning Officer did make an endorsement on it of its being valid and later on the word "valid" was changed to "invalid" by prefixing the letters "in" to the word "valid". If the endorsement that now obtains on this nomination paper, which has been exhibited in this record (Ex. P-1) was made at one and the same time, there was no occasion to squeeze in the letters "in" between the words "is" and "valid". Shri Mandal (R.W. 8) has admitted as much in the return filed by him in Misc. Petition No. 33 of 1957 before the High Court of Judicature, Madhya Pradesh (Ex. P-2) by saying that

he had revised the previous order of declaring valid nomination paper of respondent No. 12. I find that the Returning Officer of the Parliamentary Constituency had accepted the nomination paper of respondent No. 12 for that Constituency and that later, the same day, rejected it after reconsideration.

67. The function of the Returning Officer of this constituency, so far as the scrutiny of nomination papers is concerned, was over after making endorsement on the nomination papers required by section 36(6) Representation of People Act. The declaration of his decision, as endorsed on the nomination paper in the sense of making it known to the persons present, was not necessary to make that decision effective. A Returning Officer exercises judicial functions when scrutinising nomination papers. Unless he has been invested with powers of review by the statute under which the acts as Returning Officer, there would be no power of review available to him. As such, the review or revising of the previous decision, as is admitted by Shri Mandal in his return referred to above, was without jurisdiction. This was also the view taken by the Election Tribunal, Kotah in *Natwarlal Vs. Bhartendrasingh*, 5 E.L.R. 408, with observation in which I am in respectful agreement.

68. The question now for consideration is whether this act of the Returning Officer of rejecting the nomination paper of respondent No. 12 for the Parliamentary Constituency after he had accepted it by endorsing on it that it was valid, and after he had become *functus officio* in that matter, amounts to improper rejection of the nomination paper. The question about the effect of such act of the Returning Officer, is not free from difficulty. The difficulty arises because as has been found by this Tribunal, respondent No. 12 was disqualified u/s 7(e) of the Representation of People Act at the time he filed his nomination paper. Rejecting the nomination paper of a candidate who suffers from a disqualification, even if the rejection were without jurisdiction, would not, in my opinion, be improper rejection contemplated by section 10(1) (c) of the Act. It would be an irregularity committed by the Returning Officer resulting in non-compliance with certain provisions of the Act and Rules made under it, which would be referred to subsequently.

69. The matter can be considered from another point of view. Revising of his previous order or decision by the Returning Officer, was without jurisdiction. Any act done without jurisdiction, has no legal effect. Thus, the subsequent decision of the Returning Officer holding the nomination paper of respondent No. 12 to be invalid, did not affect his previous decision of holding it to be valid. As such, there would be no valid rejection of the nomination paper of respondent No. 12.

70. Because of the subsequent decision, which was without jurisdiction, the Returning Officer failed to comply with the provisions of section 36(8), including the name of respondent No. 12 in the list of duly nominated candidates, section 38, (including his name in the list of contesting candidates) of the Act and Rules 10 and 21 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1956, under which he should have allotted a symbol to respondent No. 12 and should have provided a ballot box for him at each Polling Station in pursuance of his earlier decision accepting the nomination of respondent No. 12, which remained unaffected by his later decision. I am, therefore, of the view that this is not a case of improper rejection of nomination paper, but is a case of non-compliance with the provisions of the Representation of People Act and Rules made under it, covered by section 100(1) (d) (iv) of the Act.

71. In order to succeed, the petitioner has, therefore, to establish that because of this non-compliance, the result of the election has been materially affected. It cannot be urged that the result of the election is materially affected if a candidate, who suffers from disqualification, is not allowed to contest. There is nothing on record to show that the result of the election would have been otherwise than what it is if respondent No. 12 had been allowed to contest.

72. The election of respondent No. 1. is, therefore, not liable to be declared void. Because of this, the question whether election of respondent No. 11 should be declared void if election of respondent No. 1 is declared void, does not arise.

73. For the reasons stated above, the petition is liable to be dismissed. I dismiss it under section 98 of the Representation of People Act. The petitioner shall pay Rs. 550/- as costs to respondent No. 1 and Rs. 100/- as costs to respondent No. 11 inclusive of counsel's fee, and shall bear his own costs.

CHHINDWARA;

The 15th February, 1958.

(Sd.) C. B. KERR,

Member, 15-2-58.

Election Tribunal,

Chhindwara,

(M.P.)

## ELECTION PETITION No. 5 of 1957

Shri R. K. Haldalkar Vs. Shri Bhikulal

*Memo of Costs*

| Petitioner  |                  | Respdt.<br>No. I   | Respdt.<br>No. II |
|---|------------------|--|-------------------|
| 1. Stamp on petition . . .  | Nil              | Stamp on applications . . .  | 9.00              |
| 2. Stamp on exhibits . . .  | 13.87            | Stamp on exhibits . . .  | 26.50             |
| 3. Stamp on powers . . .  | 2.00             | Process fee . . .  | 17.25             |
| 4. Stamp on applications . . .  | 1.00             | Subsistence allowance to<br>witnesses and T.A. etc. . .                          | 66.50             |
| 5. Service of process . . .   | 6.75             | Commissioner's fee and<br>other expenses of witnesses<br>examined on commission. | 153.88            |
| 6. Subsistence allowance to<br>witnesses and T.A. etc. . .                          | 6.00             | Pleader's fee (certificates<br>filed).   | 500.00            |
| 7. Commissioner's fee and<br>other expenses of witnesses<br>examined on commission. | 40.75            |  | 100.00            |
| 8. Security deposit . . .   | 1000.00          |  |                   |
| 9. Pleadet's fee (Certificate not<br>filed.)  |                  |  |                   |
|   |                  | Rs. N.P.   | Rs. N.P.          |
| TOTAL . . .   | Rs. 1070.37 N.P. | TOTAL . . .  | 773.13            |
|   |                  | costs allowed . . .  | 550.00            |
|   |                  | costs disallowed . . .   | 223.13            |

(Sd.) C. B. KEKRE, Member,  
Election Tribunal,

The 20th February 1958.

Chhindwara, M.P.

[No. 82/5/57.]

By order,

S. C. ROY, Secy.

